IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 429 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT
Versus
AASIF @ IKBAL MEHRAJBHAI

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Appearance :
MR KP RAVAL APP for Appellant
MR BHARAT JANI for Respondent

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE M.R. SHAH

Date : 26/10/2007

ORAL JUDGMENT : (Per : HONOURABLE MR.JUSTICE J.R.VORA)

1 Leave to Appeal granted. Appeal is Admitted. Learned Advocate Mr. B.G. Jani waives for respondent.

2 Instant Appeal is preferred by the State under Section 378 of the Code of Criminal Procedure, against the judgment and order delivered by Additional Sessions Judge, Fast Track Court at Navsari, on 17th of June, 2004, in Sessions Case No. 2 of 2004, whereby present respondent, being accused of the Sessions Case, came to be acquitted for the offences punishable under Sections 493, 417, 376 and 506(2) of the Indian Penal Code.

3 Learned APP Mr. K.P. Raval for the appellant - State and learned Advocate Mr. B.G. Jani, for the respondent, requested this court to hear the Appeal finally at this stage as the Record and Proceedings of the Trial Court is available with this Court and that they would provide extra copies of the evidence recorded during the trial as well as the copies of the documents, produced before the Trial Court. In the facts and circumstances of the matter, request is granted and the matter is heard finally

4 As per the brief facts of the present case, complainant

Laxmiben Dhirubhai Rathod presented a private complaint in the Court of learned Chief Judicial Magistrate, at Navsari, on 9th of July, 2002, stating that present respondent accused had raped her. It is the case of the complainant that she was staying at Navsari at Dargah Road and was doing household work of others and was maintaining herself. Along with her, mother and younger brother were also staying. Before 8 to 10 years of the filing of the complaint, the accused respondent came in her contact and frequently was visiting her house. The accused induced and tempted her and against the wish of the complainant raped her. The accused respondent was promising that he was going to marry her and that this status continue for 8 to 10 years, in which the accused was behaving as her husband. The accused also took away valuable things and ornaments of cash amount from her house. The respondent was declaring her as his wife. On account of this relationship, the complainant became pregnant and when she conveyed this fact to the respondent, he denied that he was not going to marry the complainant and alleged that the child was not of his. The respondent also threatened the complainant to kill her. According to complainant, no legal tie of wedlock was existing between them, and on inducement, the accused had raped her, and on account of that, she was pregnant and, therefore, for the above said charges, a complaint came to be filed by the complainant, which was sent by the Chief Judicial Magistrate,

First Class, to the Police, under Section 156(3) of the Code of Criminal Procedure, for investigation. On 9th of July, 2002, the said complaint was registered before Navsari Police Station as `M' Case No. 4 of 2002. The investigation was entrusted to PW-7 Govindbhai Devshibhai Thakore. He recorded the statements of the witnesses and the complainant. On 16th of October, 2002, he draw the panchnama of blood and saliva of the accused were collected and sent to Forensic Science Laboratory and vide Exhibit – 17 such analysis is produced. While DNA test analysis is produced at Exhibit – 18. He submitted the charge sheet before the Court of learned Judicial Magistrate, First Class. Concerned court committed the case to the Court of Sessions and it was registered as Sessions Case No.2 of 2004. Thereafter the case was made over to Additional Sessions Judge and Fast Track Court, Navsari, who framed charges against the respondent on 22nd of April, 2004 vide Exhibit-1, to which the respondent accused pleaded not guilty. Therefore, the prosecution examined as many as 17 witnesses and produced on record voluminous documentary evidence.

5 On evidence of prosecution being over, statement of the accused was recorded by the Trial Court under Section 313 of the Code of Criminal Procedure, in which the defence of the accused was of total denial. The learned Trial Judge thereafter heard prosecution as well as

defence and came to the above conclusion and, hence, this Appeal.

6 Learned APP Mr. K.P. Raval for the State and learned Advocate Mr. B.G. Jani for the respondent were heard in great detail.

7 We have gone through the Record and Proceedings of the Trial Court and we have re-appreciated the evidence recorded during the trial. We have scanned the reasons advanced by the Trial Court for the conclusion of acquittal. We have considered the vital features of the matter and reasonable probabilities arising out of the circumstances of the case. We have thoroughly gone through the oral as well as documentary evidence with reference to the appreciation of evidence and contentions raised by appellant as well as respondent.

8 Turning to the evidence of prosecution, PW-1 Chhibubhai Dhirubhai Rathod, examined at Exhibit-5, brother of the complainant. He stated before the police that the respondent was in love of Laxmiben and she became pregnant on account of this relationship. However, the witness has not supported the prosecution case in any manner. PW-2 Madhuben Chhibubhai, examined at Exhibit-6, is also a relation of the complainant Laxmiben. According to the prosecution case, she stated before the police that Laxmiben was working in one factory where the

respondent was also working and they were staying together as husband and wife and that Laxmiben – complainant became pregnant. On this count, she stated before the police that, accused had induced Laxmiben with the promise to marry and the child was of the respondent. The witness has not supported the prosecution case in any manner. Exhibit-7 is the panchnama of the physical condition of the accused. PW-3 Laxmiben Dhirubhai Rathod is examined at Exhibit-8. She has not supported her complaint and stated that she had come in contact with the accused before 10 years and were staying as husband and wife at the residence of the complainant. She stated that she had physical relationship with the accused by her consent and thereafter she was taken to the house of the respondent and from there they had gone to the house of the mother of the complainant and had stated that after finding the place to stay, the respondent would take her from the house of her mother. She was confronted with her complaint and prosecution cross-examined this witness. In examination-in-cross by the defence, she stated that she had physical relationship with the respondent with her wish and will and she was going wherever the respondent was going. There was no inducements or force by the accused for anything. The complaint which the complainant filed before the Court is placed at Exhibit -9. PW-4 Vithalbhai Dhirubhai Rathod, examined at Exhibit-10, is brother of the complainant. He has also been examined to prove

the fact that Laxmiben was induced and tempted by the respondent with promise to marry but he did not marry Laxmiben and raped her. On account of which, Laxmiben became pregnant, but this witness also did not support the prosecution case and was cross-examined by the prosecution. However, in the cross-examination of the defence, he denied that he had given any statement before the police. PW-5 Dr. Kamleshbhai Vinodbhai Mehta, examined at Exhibit-12, was the Medical Practitioner at Kashiba Vasanji Marolia Hospital. According to him, Laxmiben had been to the said hospital for treatment during pregnancy and thereafter on 11th of July 2002, she was admitted to the hospital. She gave birth of a female child. She was discharged from the hospital on 14th of July, 2002. He produced on record at Exhibit – 13 papers of treatment. No cross-examination of this witness was conducted by the defence. PW-6 Gulabben Dhirubhai, examined at Exhibit–14, is mother of the complainant Laxmiben. She stated that before 10 years, Laxmiben had come in contact with the respondent and from Sachin GIDC they were commuting to Navsari She had not raised any objection to this relationship. She stated that Laxmiben was going with the respondent with her wish and will. She stated that when her daughter became pregnant, respondent was also visiting Marolia Hospital for the treatment of Laxmiben and thereafter suddenly he stopped to come to the hospital. There was no wedlock between them.

According to her, thereafter, Laxmiben had given birth of a daughter. In cross-examination of the defence, she stated that her daughter Laxmiben had become pregnant by her consent. She also stated that a compromise was arrived at between the accused and the complainant. She denied that her daughter was cheated by the respondent by inducing her for marriage. PW-7 Govindbhai Devshibhai Thakore, examined at Exhibit-15, is the Investigating Officer.

9 This is all is the evidence of the prosecution.

10 From going through the evidence, it clearly appears that, the relationship between the complainant and the accused continued upto 8 to 10 years. None of the witnesses has supported the prosecution that the accused induced the complainant Laxmiben for marriage and forcibly raped her against her will nor there is any evidence to come to the conclusion that the complainant was cheated by the accused in any manner. Therefore, the charges levelled against the accused has not been established beyond doubt by the prosecution. In fact, there is no iota of evidence against the accused for any of the charges levelled against him. For these reasons, the Trial Court acquitted the accused.

11 When we scanned the reasons assigned by the Trial Court,

we found that the conclusion arrived at by the Trial Court is probable and possible and there is no scope of even second view. The scope of the appeal against the acquittal is well settled that unless and until it is found that the conclusions arrived at by the Trial Court are perverse, manifestly erroneous, palpably wrong or demonstrably unsustainable, no interference is permitted in the order of acquittal. By no stretch of reasoning, it could be said that the conclusions arrived at by the Trial Court is perverse and, therefore, no interference is warranted in the judgment and order impugned in this Appeal. In view of the above said discussion, following order is passed.

"Appeal stands dismissed".

(J. R. VORA, J.)

(M. R. SHAH, J.)

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